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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,064	06/06/2001	Futoshi Nakamura	NE-1060-US/KWG	5651

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EXAMINER

UBILES, MARIE C

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/874,064

Applicant(s)

NAKAMURA, FUTOSHI

Examiner

Marie C. Ubiles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed on November 6, 2003 has been entered. The abstract and specification have been amended. Claims 1-4, and 7 have been amended. No claims have been added. No new matter has been introduced. Claims 1-7 are still pending in this application, with claims 1 and 7 being independent.

Drawings

2. The drawings were received on November 6, 2003. These drawings are accepted.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toba (GB 2,339,648) in view of Colonna et al. (US 6,115,620). As for claim 1, Toba discloses a folding type portable communication device (See Figure 1) having two communication units (See Figure 1, elements 1-2) connected to each other in a foldable manner (See Description of the Preferred Embodiments, page 7, lines 16-19) and having a folded position (See Figure 2) and an unfolded position (See Figure 1). Toba also discloses an

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open/close detection switch or two-level switch (See Figure 1, element 5) for detecting which one of the folded (See Figure 2) and unfolded (See Figure 1) position the two communication units (See Figure 1, elements 1-2) have (See Description of the Preferred Embodiments, page 7, lines 20-23), and the switch providing a first level when the two communication units have the folded position (See Description of the Preferred Embodiments, page 7, lines 26-29) and a second level when the two communication units have an the unfolded position (See Description of the Preferred Embodiments, page 7, lines 29-30; page 8, line 1).

Further, Toba's invention discloses a vibrator (See Figure 3, element 15) and a sounder (See Figure 3, element 16). Therefore, it can be seen that Toba's invention lacks the mode selector operatively coupled with the two-level switch, so that the vibrator or the sounder respond in accordance to the level provided by the said switch.

Colonna et al. (US 6,115,620) teaches, "A portable communication device comprises a first housing element and a second housing element, wherein the second housing element is movingly connected to the first housing element such that the second housing element is settable to substantially three positions. A sensor coupled to the first housing element and the second housing element produces a position signal to indicate the position of the second housing element relative to the first housing element, and an activation element disposed on one of the first housing element and the second housing element produces an activation signal in response to a user input. A controller operates the portable communication device in one of a

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private-mode, a speakerphone mode, and a standby mode in response to the position signal and the activation signal [...] When the radiotelephone 100 is operating in the speakerphone mode and the user moves the second housing element 204 back to the first position (FIG.2), the radiotelephone 100 will switch operation to the private-mode.” (See Detailed Description of the Preferred Embodiments, Col. 2, lines 41-54, Col. 5, lines 66-67 and Col. 6, lines 1-2).

As for claim 2-3, Colonna et al. also teaches a controller (See Figure 1, element 106) that energizes a private-mode (See Figure 11, Step 2100) or first circuit upon reception of a call when the two-level switch provides the first level indicating that the two communication units have the folded position (See Detailed Description of a Preferred Embodiment, Col. 3, lines 23-28) and vice versa, and where the controller energizes the speaker-phone mode (See Figure 11, element 2124) or second circuit upon reception of a call when the two level switch provides the second level indicating that the two communication units have the unfolded position (See Detailed Description of a Preferred Embodiment, Col. 3, lines 23-28) and vice versa. Referring to claim 5, Colonna et al. teaches a mode selector that includes a memory including or coupled to the controller (See Detailed Description of a Preferred Embodiment, Col. 3, lines 1-3). The examiner takes official notice that this memory can be used to store various call reception settings.

As per Colonna's teachings, it is possible to select a mode of operation (in this case: private and speaker-phone mode) in response to the position of the two units in a

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folding-type communication device. It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify Toba's invention as per the teachings of Colonna et al. and thus, provide a folding-type communication device where the vibrator and/or the sounder respond in accordance to the level provided by a position signal or two-level switch.

Claim 7 is rejected for the same reasons as claim 1.

As for claims 5-6, Toba discloses a folding-type portable communication device, wherein the two-level switch includes a magnet (See Figure 1, element 7) mounted within one of two communication units (See Detailed Description of the Preferred Embodiments, page 7, lines 24-26) and a detector (See Figure 1, element 5) within the other communication unit for detecting a magnetic field provided by the magnet (See Detailed Description of the Preferred Embodiments, page 7, lines 26-29). The magnet is brought into registry with the detector when the two communication units have the folded position (See Detailed Description of the Preferred Embodiments, page 7, lines 26-29).

Response to Arguments

4. Applicant's arguments filed November 6, 2003 have been fully considered but they are not persuasive. The following arguments were provided by the applicant in regards to the invention:

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- The invention provides alternate ways of getting the user's attention relative to different activities where the device is more likely to be either folded (e.g. in a pocket) or unfolded (e.g. working at a desk or table).
- The invention provides one of two desired results for the user without requiring immediate conscious interface to achieve immediate results (passive use).
- The invention is much more sensitive to issues of human factors, particularly cultural factors (e.g. a meeting, or a movie), than is displayed by either of the prior arts.

The examiner deems the arguments non persuasive for the following reasons:

- On Toba's invention the open/close detection circuit is used to activate the LED, this LED is coupled to a control circuit and a power supply control circuit to which a vibrator and sounder are attached too. While on Toba's invention the open/close detection circuit (i.e. a switch which is closed by the detection of a magnetic field) is used to control the LED activity in presence of an incoming call (e.g. LED lights up while device is folded), by itself, it is obvious to one of ordinary skill in the art that the open/closed detection circuit disclosed by Toba can be used to drive other calling alert features (e.g. sounder, vibrator); the aforementioned sounder and vibrator are disclosed by Toba on Fig. 3 (elements 15 and 16) of GB 2,339,648. As previously discussed, Colonna et al. teaches a way to control different

features (e.g. speakerphone, private mode, stand-by) on a cell phone based on the position (open, closed, partially open/closed) of the two communication units that conform the device. The combination of Toba's invention with Colonna et al. teachings provides the user with cell phone that can drive the LED, vibrator and/or sounder (as opposed to the speakerphone, private or standby features) based on the position of the two units.

- Cultural reasons are not considered persuasive enough to overcome the examiner's rejection. It is well-known in the art, that a user can manually set up the alert modes on a cellphone, so as to avoid interrupting e.g. a meeting or a movie.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marie C. Ubiles whose telephone number is (703) 305-0684. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7201.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.


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Marie C. Ubiles

December 12, 2003

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JACK CHIANG
PRIMARY EXAMINER